

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT LEE DEFOY,

Petitioner,

v.

SUPERINTENDENT JOHN M.
McCULLOUGH, et al.,

Respondents.

Civil Action No. 00-110 Erie

MEMORANDUM ORDER

The original petition for writ of habeas corpus in the above-captioned matter was received by the Clerk of Court on April 12, 2000 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. On January 23, 2001, Petitioner was appointed counsel and, on May 17, 2001, he was granted leave to file an amended petition.

Thereafter, on January 9, 2007, Petitioner filed a motion for summary judgment [48] challenging the decision by the Pennsylvania Board of Probation and Parole on August 12, 1997 to deny him reparole on his underlying robbery and larceny offense. Petitioner argues that his Fifth Amendment right not to be compelled as a witness against himself was violated in connection with these proceedings.

The Chief Magistrate Judge's Report and Recommendation, filed on September 5, 2007 [52], recommends that the Petitioner's Motion for Summary Judgment [48] be denied, that the Petition for Writ of Habeas Corpus be dismissed, and that a certificate of appealability be denied. Objections were filed by Petitioner on September 19, 2007 [53]. After de novo review of the amended petition and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 28th Day of September, 2007;

IT IS HEREBY ORDERED that the Petitioner's Motion for Summary Judgment [48] be and hereby is DENIED, the Petition for Writ of Habeas Corpus is DISMISSED, and a certificate of appealability is DENIED.

The Report and Recommendation of Chief Magistrate Judge Baxter, dated September 5, 2007 [52] is adopted as the opinion of the Court.

/s/ Sean J. McLaughlin
SEAN J. McLAUGHLIN
United States District Judge

cm: All counsel of record.
Chief U.S. Magistrate Judge Susan Paradise Baxter